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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Billed Party Preference for InterLATA 0+ Calls	) CC Docket No. 92-77
	)

COMMENTS OF SPRINT CORPORATION

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Sprint Corporation hereby submits its comments in response to the Second Further Notice of Proposed Rulemaking, released in the above-captioned docket on June 6, 1996 (FCC 96-253).

I. INTRODUCTION AND SUMMARY

In the Second Further Notice, the Commission proposes to establish a "benchmark" rate for operator services calls handled on a "0+" basis, and to require disclosure to consumers, before chargeable time begins, if the operator service provider (OSP) intends to charge more than the benchmark rate.[1] The Commission tentatively concludes that the benchmark should be set at 115% of the weighted average charges for 0+ calls of the three largest operator service providers -- Sprint, AT&T and MCI. Although the Commission's

[1] Sprint assumes from the basis on which the proposed benchmark is calculated in Apps. D and E that the Commission intends to apply the benchmark only to interstate calls, rather than including international calls in the proposed rules.

proposal needs to be clarified in two key respects -- the scope of "0+" calls to which it applies and the manner in which the benchmark would be calculated -- Sprint agrees, in concept, with the Commission's proposal, with one critically important caveat: the Commission must be prepared to vigorously and effectively enforce its benchmark and disclosure requirements. If it is not prepared to do so, the Commission will inflict serious commercial harm on carriers that endeavor, in good faith, to comply with the Commission's rules and at the same time will fail to protect the intended beneficiaries of these rules: consumers who use public phones.

On the other hand, Sprint opposes the Commission's apparent tentative conclusion that it should forebear from requiring operator service providers to file tariffs, but supports the Commission's tentative conclusion that if tariffs are required, they must disclose specific, discernible rates and charges, rather than a range of rates.

Finally, the benchmark rate level should constitute the absolute ceiling on charges for calls from inmate-only phones in correctional institutions.

II. SPRINT SUPPORTS THE COMMISSION'S PROPOSED BENCHMARK CONCEPT, BUT ONLY IF IT IS EFFECTIVELY ENFORCED

The current regulatory environment for "public" phones (hotel room phones, payphones, etc.) has encouraged the development of a two-tier pricing system for 0+ calls made from such phones. Premises owners and payphone providers who are concerned about the prices their guests and patrons are charged for telephone calls often insist that the presubscribed carrier charge no more for such calls than the rates charged by the major IXCs. On the other hand, those premises owners and private payphone providers that are most interested in maximizing their own revenues[2] choose a carrier that offers higher rates to the public and is willing to bill and collect location-imposed surcharges.

For more than seven years, Sprint has urged the Commission to adopt a system of billed party preference that would have the effect of eliminating this two-tier pricing system and make all operator service carriers compete for traffic by offering high-quality services to consumers at the lowest possible price. Given the Commission's reluctance to order implementation of billed party preference, Sprint has responded to the existing regulatory and market environment by attempting to meet the needs of both tiers of the marketplace. Sprint offers its own operator services to premises owners at rates to the calling public that it believes are competitive with those of any other carrier. In addition, a separate subsidiary of Sprint -- ASC Telecom -- was created to respond

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[2] These revenues are obtained from commissions paid by the presubscribed operator service provider ("OSP") or from location surcharges imposed by the premises owner but collected from the party paying for the call by the presubscribed OSP.

to the premises owners and private payphone providers who are willing to trade off higher charges to their patrons in exchange for higher revenues to themselves.

The Commission should understand that in the absence of regulatory action, there is little practical ceiling to what can be charged to consumers who make calls from phones in the high-rate tier of the current market. Operator service providers compete for presubscription of public phones in this tier through the level of commissions they can promise, or surcharges that they will agree to bill, which creates an incentive for an ever-increasing upward spiral of rates and surcharges.

As a corporation that participates in both tiers of the market, Sprint fully supports the benchmark concept proposed in the Second Further Notice. The requirement to disclose rates that exceed the benchmark level will create a powerful inducement to moderate the charges in the high-rate tier of the market.[3] However, the benchmark will have this effect only if it is vigorously enforced, and violators are swiftly

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[3] There is no merit to requiring rate disclosures on all calls (cf. ¶15). Such a requirement would needlessly increase the costs of carriers that charge low rates, would require an increase in rates to cover such costs, and would delay call completion for all calls. Sprint estimates that the labor cost of the rate disclosure would approximate $.35 cents per call. In addition, OSPs would incur the costs of developing systems that would let the operator know, on a real-time basis, the charges for the particular type of call being placed by the calling party.

and severely punished. In the absence of effective enforcement action, the imposition of a benchmark/disclosure requirement will only serve to penalize those OSPs who comply with the rules. Carriers that can evade the rate disclosure requirement will be in a position to out-bid carriers that comply with the rules. Complying carriers that charge rates at the benchmark level can easily be out-bid by OSPs that charge rates above the benchmark. And carriers that charge above-benchmark rates and comply with the disclosure requirement will be disadvantaged, vis-à-vis carriers that do not disclose their rates, in two respects: they will incur the costs involved in disclosing their rates, and they can be expected to complete fewer calls, since some consumers will undoubtedly choose not to complete the call on a 0+ basis once they learn what rates will be charged. Thus, instituting a benchmark/disclosure regime without the realistic threat of effective enforcement will, in the long run, do nothing to protect the public and will only injure carriers that undertake to comply with the Commission's rules in good faith.

Sprint believes that it is reasonable to set the benchmark rate, as the Commission has tentatively proposed, at 115% of the weighted average operator service charges imposed by Sprint, AT&T and MCI.[4] However, in order to avoid any

[4] Any per-call compensation ordered in CC Docket No. 96-128 should be included in the base rate on which the benchmark is calculated.

carrier from being able to "game" the process, the benchmarks should be revised quarterly, rather than annually as proposed in ¶25, with a much shorter lag than the proposed six months between the date on which rates are based and the date on which they begin to apply.

Two aspects of the benchmark need clarification. First, the Commission should make clear that the benchmark requirement applies only to 0+ calls handled by the "presubscribed provider of operator services" from "aggregator" phones (i.e., payphones, hotel room phones, college dormitory phones, etc.) as those terms are defined in Section 226(a) of the Act. Sprint believes this requested clarification is fully consistent with the Second Further Notice, taken as a whole. However, in ¶15, the Commission seeks comment on the benefits and costs associated with "imposing a price disclosure requirement on all 0+ calls," which literally would include 0+ calls from business or residential telephones. The vast majority of consumer complaints on operator service charges relate to calls from aggregator locations. Thus, is no demonstrated need to impose the benchmark and disclosure requirements on 0+ calls made from business or residential phones. Carriers who compete for the 1+ business of consumers have no history of, and no incentive to, overcharge those consumers for the 0+ calls they place. Otherwise they would risk losing both the 0+ and 1+

business of those consumers. The potential for high rates comes into play only when there is casual contact between the consumer and the operator service provider as is the case where aggregator phones are concerned. Accordingly, the Commission should explicitly limit the scope of any rules it promulgates to 0+ calls from aggregator locations.

The second clarification that is needed concerns the detail with which the benchmark price should be established. Sprint believes the benchmark rates should vary with all six of the characteristics enumerated in ¶26 of the Second Further Notice -- i.e., there should be separate benchmarks for daytime calls, nighttime calls, customer-dialed calls, operator-dialed calls, etc. In this connection, Sprint is unclear as to the meaning of the sentence in ¶26 that states:

> The single-benchmark would be set at some specified percentage above the average of the highest rates the three largest OSPs charged for calls in any of the six above-mentioned characteristics.

If, by using the phrase "the highest rates...for calls in any of the six...characteristics," the Commission meant to suggest that the benchmark rate for a customer-dialed calling-card calls placed in the nighttime rate period could be set 15% above the rates charged by the three largest carriers for daytime, operator-dialed, person-to-person calls for the same distance, then little purpose would be served by the benchmark. OSPs could still charge greatly excessive prices for the lower-cost forms of calls with impunity and without disclosure to the party paying for the call. Sprint would expect that the Commission would continue to be bombarded with complaints from dissatisfied customers just as it is under the present regulatory framework. Thus, Sprint sees little alternative to a rather complex matrix that takes into account for each call all of the six factors enumerated in ¶26 in order to establish the benchmark price. Since it will be impossible for the OSP to know, in advance, how long the consumer intends to talk (even the consumer, if queried, may not be able to give an accurate answer), Sprint believes that the benchmarks ought to be calculated on an assumed billable call duration of 8 minutes. This reflects Sprint's current experience with operator services calls. Thus, when an OSP charges above-benchmark rates, its disclosure should indicate the assumption as to the length of the call (e.g., "For an 8 minute call, the charge will be approximately $x.xx").

III. THE COMMISSION SHOULD NOT FOREBEAR FROM REQUIRING TARIFFS TO BE FILED

Although Sprint argued in favor of permissive detariffing CC Docket No. 96-61, it believes that all "providers of operator services" should be required to file tariffs for calls from "aggregator" locations, as those terms are defined in §226, pursuant to §203 of the Act.[5] Given the history of

[5] The "informational tariff" provisions in §226 were enacted at a time when the Commission asserted the authority to allow

excessive charges for operator services, Sprint believes the Commission can and should require carriers to continue to maintain tariffs for 0+ services they offer from public phones. This is the one segment of the market where competition does not work to drive prices down, but instead drives prices up, in order to finance commissions to aggregators that are necessary to gain the 0+ business. Thus, tariffs are needed as a tripwire to enable the Commission to determine whether further investigation is necessary. Even if the benchmark/disclosure requirements proposed by the Commission are adopted, such tariffs can have important consumer protection functions. For example, if the benchmark is based upon an assumed average call length, it is not beyond the realm of possibility that an OSP could charge below-benchmark rates for that particular call length, to relieve itself of the requirement to make rate disclosures to customers, but charge substantially higher rates for calls of shorter or longer duration. The filing of tariffs would enable the Commission to see whether an OSP is engaging in that ploy, and if so, to take appropriate action.

Tariffs also perform a useful function for OSPs. In cases, such as a 0+ call from an aggregator phone, where there

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permissive detariffing under §203, a determination that was later overturned in the courts (see MCI Tel. Corp. v. American Tel. & Tel. Co., ___ U.S. ___, 114 S. Ct. 2223 (1994)) and thus no longer serve any useful function.

is no pre-established relationship between the carrier and the party paying for the call, a tariff is necessary in order to form a contract between the carrier and such casual users of its services. In the absence of such a contractual obligation, unscrupulous consumers could attempt to "stiff" the operator service provider for calls, which could lead to substantial collections expense and litigation.

In any event, even if the Commission were to determine to forebear from <u>requiring</u> tariffs to be filed by OSPs (whether under §203 or §226 of the Act), there is no warrant for mandatory detariffing, as the Commission appears to contemplate in ¶44. The fact that the filing of tariffs in the past has not protected consumers from the high rates charged by some OSPs is a function of the Commission's failure to investigate the lawfulness of those tariffs and to prescribe lawful charges in place of the excessive charges that some OSPs may be imposing. It is also a function of the fact that the Commission has permitted carriers to file range tariffs that preclude the Commission from even knowing what the likely charges are for any particular call. Continuing the tariff filing requirements is not likely to lead to any collusive behavior among OSPs, contrary to the Commission's fears in ¶42. As noted above, this is the one area of the market where price competition does not work. Competitive forces drive the rates charged to the public up, in order to finance higher commissions to aggregators. Thus, no collusion would be needed among competitors wishing to raise their rates -- they have every incentive to do so individually -- and as a result, whatever collusive effect the Commission may believe that the filing of tariffs may have in other market segments is totally absent here.

Sprint agrees with the Commission's tentative conclusion (¶¶45-47) that range-of-rate tariff filings should not be permitted. They neither provide actual notice to the customer of what the charges for any particular call will be -- a basic function of a tariff -- nor enable the Commission to determine whether non-linear rate structures are being employed to circumvent the spirit of the benchmark/disclosure rules.

IV. THE BENCHMARK RATE SHOULD BE A CEILING RATE FOR INMATE-ONLY PHONES IN CORRECTIONAL INSTITUTIONS

Since inmates in correctional institutions typically have no ability to select an operator service provider, Sprint agrees with the suggestion in ¶¶48-49 that the benchmark/disclosure requirements would not be effective in curbing the incentives to charge high rates for calls from such phones. Sprint submits that as an alternative, the benchmark rates should be established as ceiling rates for calls from inmate-only phones in correctional institutions, i.e., that OSPs be flatly prohibited from charging rates in excess of the benchmark.

V. CONCLUSION

Sprint supports the adoption of a benchmark/disclosure plan, as proposed in the Second Further Notice, consistent with the clarifications and recommendations in the foregoing comments.

Respectfully submitted,

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July 17, 1996

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I, Joan A. Hesler, hereby certify that on this 17th day of July, 1996, a true copy of the foregoing document was served U.S. First Class Mail, Postage Prepaid, or Hand Delivered, upon each of the parties listed below.

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